

instructing the Committee on the Judiciary to investigate the action of the President in sending to the Senate for ratification a treaty relating to the utilization by the United States and Mexico of certain southwestern rivers. The resolution declared that the Constitution (art. IV, §3) vests regulatory power over U.S. territory in the Congress, and that the action of the President constituted an invasion of the House's prerogatives relating to the control of United States' territory and property. Without debate, a motion to refer the resolution to the Committee on the Judiciary was agreed to.<sup>(13)</sup>

***Judicial Invasion of House Prerogatives***

**§ 13.3 A resolution declaring that the constitutional prerogatives of the House had been invaded by the issuance of a court order restraining the publication of a committee report presents a question of the privilege of the House.**

On Dec. 14, 1970,<sup>(14)</sup> Mr. Richard H. Ichord, of Missouri, offered as a matter involving the privilege

13. 90 CONG. REC. 1841, 78th Cong. 2d Sess.

14. 116 CONG. REC. 41355, 91st Cong. 2d Sess.

of the House a resolution (H. Res. 1306) ordering the Public Printer to publish a report of the Committee on Internal Security and enjoining all persons from interfering therewith, it being alleged, inter alia, that the prior issuance of a temporary order by a United States District Court restraining the publication of the committee report constituted an invasion of the House's prerogatives granted by the U.S. Constitution (art. I, §6, clause 3). After lengthy debate the resolution was agreed to on a roll call vote.<sup>(15)</sup>

**§ 14. Service of Process on Members**

The service of process on the House or those associated with it, or the exercise of authority over it by another coordinate and coequal branch of government, including any mandate of process which commands a Member's presence before another branch of government during sessions of the House, has historically been perceived by the House as a matter intimately related to its dignity and the integrity of its proceedings, and as constituting an occasion for the raising of the question of the privilege of the House.

15. Id. at P. 41374.

The rules and precedents of the House require that no Member, official, staff member, or employee of the House may, either voluntarily or in obedience to a subpoena, testify regarding official functions, documents, or activities of the House without the consent of the House being first obtained. Likewise, information on papers obtained by Members, officers, and staff employees of the House pursuant to their official duties may not be revealed in response to a subpoena without the consent of the House. Accordingly, when a House Member, officer, or employee is subpoenaed on a matter relating to House business, the privilege of the House arises; he or his supervisor therefore advises the Speaker, who lays the facts before the House for its consideration.<sup>(16)</sup>

### ***Service of Federal Court Summons***

#### **§ 14.1 The receipt of a summons naming a Member (who was also Majority Leader) of**

16. See 113 CONG. REC. 29374–76, 90th Cong. 1st Sess., Oct. 25, 1967. For instances where the receipt of judicial process by a House officer or Member has resulted in the presentation of a question of the privilege of the House, see §§ 15–17, *infra*.

**the House in his official capacity as a defendant in a civil action brought in a federal court raises a question of the privilege of the House and the matter is laid before the House for its consideration.**

On July 8, 1965,<sup>(17)</sup> the Chair recognized Mr. Carl Albert, of Oklahoma, who rose to a question of the privilege of the House:

MR. ALBERT: Mr. Speaker, I rise to a question of the privilege of the House. THE SPEAKER:<sup>(18)</sup> The gentleman will state the question of privilege.

MR. ALBERT: Mr. Speaker, in my official capacity as a Representative and as majority leader of this House, I have been served with a summons issued by the U.S. District Court for the District of Columbia to appear in connection with the case of the All-American Protectorate, Inc. against Lyndon B. Johnson, and others.

Under the precedents of the House, I am unable to comply with this summons without the consent of the House, the privileges of the House being involved. I therefore submit the matter for the consideration of this body.

I send to the desk the summons.

THE SPEAKER: The Clerk will read the subpoena.

Thereupon the summons was read to the House.

17. 111 CONG. REC. 15978, 15979, 89th Cong. 1st Sess.

18. John W. McCormack (Mass.).

The Speaker and the Minority Leader, Gerald R. Ford, of Michigan, had been named in the summons, and both respectively submitted the matter to the House. The following proceedings then took place:

THE SPEAKER: The Chair has addressed a letter to the Attorney General of the United States. The Clerk will read the letter.

The Clerk read as follows:

*July 8, 1965.*

The Honorable the Attorney General,  
*Department of Justice.*

DEAR SIR: I did on July 6, 1965, accept service of a summons in the case of *The All-American Protectorate, Incorporated v. Lyndon B. Johnson et al.*, civil action file No. 1583-65, pending in the U.S. District Court for the District of Columbia. The complaint filed in this action names me, individually and as Speaker of the House of Representatives, as a defendant in this proceeding.

The majority leader of the House of Representatives, the Honorable Carl Albert, and the minority leader, the Honorable Gerald R. Ford, both of whom are named as defendants in this same proceeding, accepted service of summons on July 7, 1965.

I am including herewith the summons served upon me, and those served upon Representatives Albert and Ford, individually and in their official capacities as majority and minority leaders, respectively, in order that you may proceed in accordance with the law.

Sincerely,

JOHN W. MCCORMACK,  
*Speaker of the House  
of Representatives.*

### ***Service of Federal Court Subpena***

**§ 14.2 Where a Member receives a subpoena to appear as a witness in a federal court during a session of the House, a question of the privilege of the House arises and the matter is laid before the House for its consideration.**

On Nov. 17, 1969,<sup>(19)</sup> Mr. Henry B. Gonzalez, of Texas, rose to a question of the privilege of the House:

MR. GONZALEZ: . . . Mr. Speaker, I have been subpoenaed to appear before the U.S. District Court for the Western District of Texas to testify on Wednesday, November 19, 1969, in San Antonio, Tex., in the criminal case of the United States of America against Albert Fuentes, Jr., and Edward J. Montez.

Under the precedents of the House, I am unable to comply with this subpoena without the consent of the House, the privileges of the House being involved. I, therefore, submit the matter for the consideration of this body.

19. 115 CONG. REC. 34301, 34302, 91st Cong. 1st Sess. For additional examples see 107 CONG. REC. 5844, 87th Cong. 1st Sess., Apr. 13, 1961; 107 CONG. REC. 2481, 87th Cong. 1st Sess., Feb. 21, 1961; 107 CONG. REC. 2480, 2481, 87th Cong. 1st Sess., Feb. 21, 1961; 107 CONG. REC. 2000, 87th Cong. 1st Sess., Feb. 9, 1961; and 106 CONG. REC. 6131, 86th Cong. 2d Sess., Mar. 21, 1960.

Mr. Speaker, I send the subpoena to the desk.

THE SPEAKER:<sup>(20)</sup> The Clerk will read the subpoena.

There followed a reading of the subpoena to the House.

*Parliamentarian's Note:* Mr. Gonzalez had no information relevant to the case and the House did not authorize his appearance.

### ***Service of Modified Federal Court Subpena***

#### **§ 14.3 Where a federal court subpoena directed to a Member was modified after service by court order, the Member informed the House of the modification when he presented the subpoena to the House.**

On Feb. 9, 1961,<sup>(1)</sup> Mr. Francis E. Walter, of Pennsylvania, rose to a question of the privilege of the House and addressed the following remarks to the Chair:

MR. WALTER: Mr. Speaker, I have been subpoenaed to appear before the U.S. District Court for the District of Columbia, to testify on February 20, 1961, in the case of the United States of America against Martin Popper.

The subpoena, as originally served upon me, required that I appear and testify and bring with me certain docu-

ments. A motion to quash that portion of the subpoena duces tecum requiring the presentation of documents was granted by Mr. Justice Edward M. Curran on February 3, 1961.

Under the precedents of the House, I am unable to appear and testify without the consent of the House, the privileges of the House being involved. I therefore submit the matter to the House for its consideration.

The subpoena was sent to the desk and the Speaker<sup>(2)</sup> instructed the Clerk to read it to the House. At the conclusion of the Clerk's reading, the House agreed to a privileged resolution<sup>(3)</sup> offered by Mr. John W. McCormack, of Massachusetts, authorizing the Member to appear in response to the subpoena as modified.

### ***Service of State Court Subpena***

#### **§ 14.4 Where a Member receives a subpoena from a state court, he lays the matter before the House for action.**

On Oct. 18, 1971,<sup>(4)</sup> Mr. Don H. Clausen, of California, rising to a

20. John W. McCormack (Mass.).

1. 107 CONG. REC. 2000, 87th Cong. 1st Sess.

2. 2. Sam Rayburn (Tex.).

3. H. Res. 155.

4. 117 CONG. REC. 36494, 92d Cong. 1st Sess. For further illustrations, including some instances where the House adopted resolutions, see 116 CONG. REC. 11863, 91st Cong. 2d Sess., Apr. 15, 1970; 113 CONG. REC. 35129, 90th Cong. 1st Sess., Dec. 6, 1967; 113 CONG. REC. 28406, 90th

question of the privilege of the House, informed the House that he had been served with a subpoena from the Superior Court of the State of California. Upon the delivery of the subpoena to the desk, the Speaker<sup>(5)</sup> instructed the Clerk to read the subpoena to the House. The House took no further action in the matter.

**§ 14.5 A Member having been subpoenaed to testify at a preliminary hearing in an action pending in the state court rose to a question of the privilege of the House.**

On Sept. 23, 1971,<sup>(6)</sup> Mr. Joshua Eilberg, of Pennsylvania, rose to a question of the privilege of the House and addressed the following remarks to the Chair:

MR. EILBERG: Mr. Speaker, yesterday afternoon, after the House had adjourned, I was subpoenaed to appear before the Court of Common Pleas of Philadelphia, Commonwealth of Pennsylvania, to testify this morning, September 23, 1971, at 9 a.m., at a preliminary hearing in an action designated as Commonwealth against Patrick McLaughlin.

Under the precedents of the House, I was unable to comply with this sub-

pena, without the consent of the House, the privileges of the House being involved. I therefore submit the matter for the consideration of this body.

The subpoena was sent to the desk, and the Speaker<sup>(7)</sup> instructed the Clerk to read it to the House. The House did not adopt a resolution permitting him to attend.

***Service of Subpena Issued by District of Columbia Court***

**§ 14.6 The receipt by a Member of a subpoena to appear before a court of the District of Columbia gave rise to a question of the privilege of the House.**

On Jan. 19, 1972,<sup>(8)</sup> the Chair recognized Mr. George P. Miller, of California, on a question of the privilege of the House:

MR. MILLER of California: Mr. Speaker, I rise to a question of the privileges of the House.

Mr. Speaker, I have been subpoenaed to appear before the criminal assignment branch of the District of Columbia Court of General Sessions on January 28, 1972, in the case of the United States of America against Ernest Long.

7. Carl Albert (Okla.).

8. 118 CONG. REC. 318, 92d Cong. 2d Sess. Additional illustrations may be found at 115 CONG. REC. 26008, 91st Cong. 1st Sess., Sept. 18, 1969, and 110 CONG. REC. 1510, 88th Cong. 2d Sess., Jan. 31, 1964.

Cong. 1st Sess., Oct. 10, 1967; and 111 CONG. REC. 17002, 89th Cong. 1st Sess., July 15, 1965.

5. Carl Albert (Okla.).

6. 117 CONG. REC. 33114, 92d Cong. 1st Sess.

Under the precedents of the House, I am unable to comply with the subpoena without the consent of the House, the privileges of the House being involved. I therefore submit the matter for the consideration of this body.

I send the subpoena to the desk.

THE SPEAKER:<sup>(9)</sup> The Clerk will report the subpoena.

After the reading of the subpoena, a privileged resolution<sup>(10)</sup> was offered by Mr. Hale Boggs, of Louisiana, authorizing the Member to appear in response to the subpoena. The resolution was agreed to.

### ***Service of Municipal Court Subpena***

#### **§ 14.7 A Member having received a summons to appear before a municipal court rose to a question of the privilege of the House.**

On June 9, 1964,<sup>(11)</sup> Mr. John E. Moss, Jr., of California, rose to a question of the privilege of the House and informed the House that he had been summoned to appear and testify before the Juvenile and Domestic Relations Court of the city of Alexandria,

9. Carl Albert (Okla.).

10. H. Res. 767.

11. 110 CONG. REC. 13017, 13018, 88th Cong. 2d Sess. For an additional example see 99 CONG. REC. 3013, 3014, 83d Cong. 1st Sess., Apr. 13, 1953.

Virginia. The summons was sent to the desk, whereupon the Speaker<sup>(12)</sup> instructed the Clerk to read it to the House. At the conclusion of the Clerk's reading, a resolution<sup>(13)</sup> was offered by Mr. Carl Albert, of Oklahoma, authorizing the Member to appear in response to the summons. The resolution was agreed to.

### ***Service of Executive Agency, Subpena***

#### **§ 14.8 The receipt by a Member of a subpoena to appear and testify before a federal executive agency gives rise to a question of the privilege of the House.**

On Mar. 18, 1963,<sup>(14)</sup> after the Chair's recognition of Mr. Alvin E. O'Konski, of Wisconsin, on a question of privilege, the following proceedings occurred:

MR. O'KONSKI: Mr. Speaker, I rise to a question of privilege of the House.

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Mr. Speaker, I have been subpoenaed to appear before the Federal Communications Commission or Charles J. Frederick, hearing examiner, at the new Post Office Building, Pennsylvania Avenue and 13th Street NW., Washington, D.C., to testify on March 20,

12. John W. McCormack (Mass.).

13. H. Res. 743.

14. 109 CONG. REC. 4392, 88th Cong. 1st Sess.

1963, at 10 a.m., in the matter of Central Wisconsin Television, Inc., Federal Communications Commission docket No. 14933-14934. Under the precedents of the House, I am unable to comply with this subpoena without the consent of the House, the privileges of the House being involved. I therefore submit the matter for the consideration of this body.

THE SPEAKER:<sup>(15)</sup> The Clerk will report the subpoena.

The House then heard the report of the Clerk.

The House took no further action in the matter.

***Service of Court Orders To Appear and Show Cause***

**§ 14.9 A Member, having been served by a state court with an order to appear and show cause, rose to a question of the privilege of the House.**

On May 19, 1970,<sup>(16)</sup> Mr. Sam Steiger, of Arizona, rose to a question of the privilege of the House and informed the House that he had been served with an order to appear and to show cause issued by the Superior Court of the State of Arizona. The order was sent to the desk, whereupon the Speaker<sup>(17)</sup> instructed the Clerk to read it to the House.

15. John W. McCormack (Mass.).

16. 116 CONG. REC. 16165, 91st Cong. 2d Sess.

17. John W. McCormack (Mass.).

*Parliamentarian's Note:* The Member had been served with a subpoena duces tecum by a state court to appear as a witness for the plaintiff and to bring with him certain documents in his possession. He appeared in response to the subpoena, but refused to bring the requested documents and refused to answer oral interrogatories propounded by counsel for plaintiff. He was then served with an order to show cause why he should not be compelled to answer the interrogatories which had been propounded to him. Because the court order requested him to appear while Congress was in session, he raised the question of the privilege of the House. He did not request the House to authorize his appearance, and no further action was taken in the matter.

***Service of Order To Appear and Answer Interrogatories***

**§ 14.10 A Member, having been served by a state court with an order to appear and answer oral interrogatories, rose to a question of the privileges of the House.**

On July 22, 1970,<sup>(18)</sup> Mr. Sam Steiger, of Arizona, rising to a question of the privilege of the

18. 116 CONG. REC. 25333, 25334, 91st Cong. 2d Sess.

House, informed the House that he had been served with an order to appear and answer oral interrogatories issued by the Superior Court of the State of Arizona. The order was sent to the desk whereupon the Speaker<sup>(19)</sup> instructed the Clerk to read it to the House. At the conclusion of the reading, the House agreed to a privileged resolution<sup>(20)</sup> offered by Mr. Carl Albert, of Oklahoma, authorizing the Member to appear in response to the order at any time when the House had adjourned to a day certain for a period in excess of three days.

## § 15. Service of Grand Jury Subpena

### *Federal Grand Jury Subpena*

#### **§ 15.1 The receipt by a Member of a subpoena to appear before a federal grand jury gives rise to a question of the privilege of the House.**

On July 15, 1963,<sup>(1)</sup> the Chair recognized Mr. Edmond

Edmondson, of Oklahoma, on a question of the privilege of the House:

MR. EDMONDSON: Mr. Speaker, I rise to a question of the privilege of the House.

THE SPEAKER:<sup>(2)</sup> The gentleman will state it.

MR. EDMONDSON: Mr. Speaker, I have received a summons to appear before the grand jury of the U.S. District Court for the District of Columbia on Tuesday, July 16, 1963, at 9 o'clock a.m., to testify in the case of the United States against Jessie Lee Bell.

Under the precedents of the House, I am unable to comply with this summons without the consent of the House, the privileges of the House being involved. I, therefore, submit the matter for the consideration of this body.

Mr. Speaker, I send to the desk the summons.

THE SPEAKER: The Clerk will report the summons.

At the conclusion of the Clerk's report, a resolution<sup>(3)</sup> offered by Mr. Carl Albert, of Oklahoma, authorizing the Member to appear in response to the summons, was agreed to.

### *State Grand Jury Subpoena*

#### **§ 15.2 A subpoena to a Member requiring his appearance before a state grand jury gives rise to a question of the privilege of the House.**

2. John W. McCormack (Mass.).

3. H. Res. 436.

19. John W. McCormack (Mass.).

20. H. Res. 1155.

1. 109 CONG. REC. 12488, 88th Cong. 1st Sess. For additional examples see 95 CONG. REC. 5544, 5545, 81st Cong. 1st Sess., May 3, 1949; and 88 CONG. REC. 1267, 77th Cong. 2d Sess., Feb. 16, 1942.